

REMARKS

With this amendment Claims 16-32 are pending. Claims 1 to 15 were previously canceled. New claims 31 to 32 have been added.

Reconsideration of the application, as amended, is requested.

Support for new claim 31 can be found in the specification, for example, page 9, lines 15-17 and page 13, lines 19-20.

Support for new claim 32 can be found in the specification, for example, page 13, lines 17-18.

Objection to the Specification

The disclosure was objected to because reference character "7" was used to designate both female (*page 5, line 12*) and male (*page 5, lines 19-20*) type mechanical fasteners.

The presently presented amendment to the specification corrects this inadvertent error. Applicants submit that throughout the remainder of the specification and figures, it is clear that the reference character "7" refers to female mechanical fasteners (e.g., loops). In view of this amendment, withdrawal of the objection is requested.

Objection to the Abstract

The abstract of the disclosure was objected to because it contains the legal phraseology "incorporating therein." Furthermore, the phrase "to easily recognize with eye that" contains a grammatical error.

The presently presented amendment to the abstract eliminates the legal phraseology "incorporating therein" and corrects the grammatical error as suggested in the Office Action. In view of this amendment, withdrawal of the objection is requested.

Objection to the Drawings

In a telephone conversation between the undersigned and Examiner Kokkinos on June 4, 2009, Examiner Kokkinos indicated that there was no objection to the drawings.

§ 103 Rejections

Claims 16-19 and 21-30 are rejected under 35 USC § 103(a) as being unpatentable over USPN 6,159,584 to Eaton et al. in view of USPN 6,142,968 to Pigg et al., further in view of USPN 3,613,679 to Bijou.

Applicants respectfully traverse the rejection and submit that the Office Action fails to present a proper *prima facie* case of obviousness with respect to the present claims. The rationale for combining the references is insufficient when the references are considered as a whole.

The Office Action states in paragraph 11:

"Eaton et al. teaches that for the elastic tabs on diapers, the forces of extension must be large enough secure the diaper (*engage the wearer*) but not so great as to cause injury such as bruising or red marking (*column 4, lines 30-33*). Pigg et al. teaches that the same problems that plague diaper fasteners also affect the bandage art; bandages should have enough tension that they perform their intended function (*column 1, lines 31-35*), but should not be so stretched that they injure the wearer (*column 1, lines 59-63*). Thus, the proper fitting of bandages is analogous to the proper fitting of diapers. Pigg et al. further suggests that to alleviate these problems, is it known to mark the bandages so that they indicate the degree of stretching, in ways such as those taught by Bijou (*column 1, lines 64-67 and column 2, lines 1-2*). It would have been obvious to one of ordinary skill in the art at the time of invention, upon implementing the elastic tab of Eaton et al., to look to the teachings of Pigg et al. in order to solve the problems of wearer injury, and further to look to the teachings of Bijou as suggested by Pigg et al. in order to form a tab that indicates to the user the degree to which it has been stretched, and thus how much force it is applying to its wearer, by printing the markings of Bijou on the tab of Eaton et al."

While the Office Action indicates that Pigg et al. suggests looking to the teachings of Bijou to alleviate the problems of improperly fitting bandages, Pigg et al. actually teaches away from the marking techniques of Bijou et al. Pigg et al. says in col. 2, lines 9-11, "However, these bandages suffer from the disadvantage that it is often difficult to assess when a desired degree of extension has been achieved." Since Pigg et al. teaches the person of ordinary skill in the art that the teachings of Bijou et al. are not suitable to allow a clear assessment of when a desired degree of extension has been achieved, a person of ordinary skill in the art would not have looked to the teachings of Bijou et al. in order to modify the elastic tab of Eaton et al.

Furthermore, when the disclosure of Eaton et al. is considered as a whole, Applicants submit that a person having ordinary skill in the art would not have looked to another reference to solve the problem proffered in the Office Action, to solve the problem of wearer injury by forming a tab that indicates to the user the degree to which it has been stretched, because Eaton et al. solves this problem already. Eaton et al. teaches an extensible elastic tab that "provides a clear signal to the user to stop pulling"; (see, col. 4, lines 7-8). Further, Eaton et al. states in col. 4, lines 8-12, "In this manner the extensible elastic tab will have predictable elastic performance from one user to the next by virtue of this force increase signal causing users to uniformly extend the tab to substantially the same extension limit". The "Useful Stretch Ratio" feature taught in Eaton et al. also solves the problem of wearer injury. In *Ex parte* Debora Rinkevich and John Michael Garrison BPAI 2007-1317, the Board of Patent Appeals and Interferences concluded that a person of ordinary skill in the art having common sense would not have reasonably looked to a secondary reference to solve a problem already solved by the primary reference.

Claims 17-19 and 21-30 each depend directly or indirectly from claim 16. Each of the claims is patentable at least for the reasons given above.

In view of the above, Applicants submit that a proper *prima facie* case of obviousness has not been made and request withdrawal of the rejection of claims 16-19 and 21-30 under 35 USC § 103(a) as being unpatentable over USPN 6,159,584 to Eaton et al. in view of USPN 6,142,968 to Pigg et al., further in view of USPN 3,613,679 to Bijou.

Claim 20 is rejected under 35 USC § 103(a) as being unpatentable over USPN 6,159,584 to Eaton et al. in view of USPN 6,142,968 to Pigg et al., further in view of USPN 3,613,679 to Bijou as applied to claims 16-18 above, and further in view of USPN 6,075,178 to La Wilhelm et al.

Applicants respectfully traverse the rejection and submit that the Office Action fails to present a proper *prima facie* case of obviousness with respect to claim 20. The rationale for combining the references is insufficient when the references are considered as a whole for the reasons described above with respect to the rejection of claims 16-19 and 21-30.

The rejection of claim 20 under 35 USC § 103(a) as being unpatentable over USPN 6,159,584 to Eaton et al. in view of USPN 6,142,968 to Pigg et al., further in view of USPN

3,613,679 to Bijou as applied to claims 16-18 above, and further in view of USPN 6,075,178 to La Wilhelm et al. has been overcome and should be withdrawn.

New Claims

Applicants submit that none of Eaton et al., Pigg et al., Bijou, La Wilhelm et al., nor the combination thereof teach or suggest the subject matter of new claims 31 and 32. It would be contrary to the purposes of La Wilhelm et al. to cover up a portion of the indicator because, as noted in the Office Action, the indicator is intended to be seen. Further, since the indicators of La Wilhelm et al. are not on extensible members, La Wilhelm et al. does not teach that a window opening should extend and contract with the extensible member.

In view of the above, it is submitted that the application is in condition for allowance. Examination and reconsideration of the application, as amended, is requested.

Respectfully submitted,

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